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Abraham Lincoln

*As Attorney for the
Illinois Central Railroad Company*

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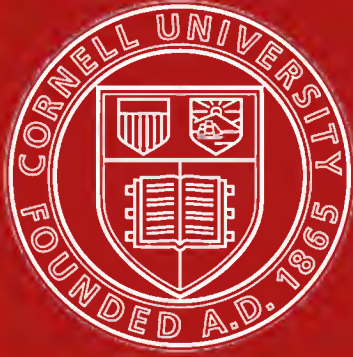
Abraham Lincoln as attorney for the Illi



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ILLINOIS CENTRAL RAILROAD COMPANY.
135 BROADWAY.

Ack. 25/8/1905.

New York,

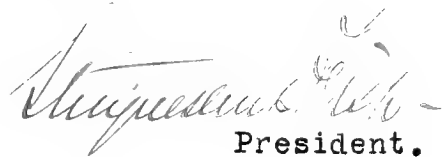
August 21, 1905.

Librarian,
Cornell University,
Ithaca, N.Y.

Dear Sir:-

On behalf of the Illinois Central Railroad Company, I beg to advise having sent you by express, for the library of Cornell University, a copy of "Abraham Lincoln as Attorney for the Illinois Central Railroad Company".

Very truly yours,


President.

No. 25.

Presented to

By

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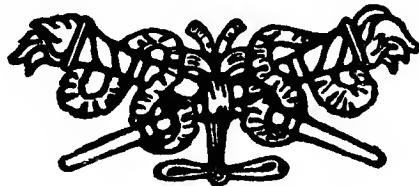
Number 25





ABRAHAM LINCOLN

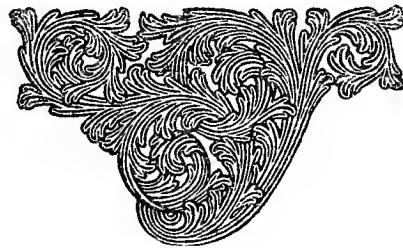
*AS ATTORNEY FOR
THE ILLINOIS CENTRAL
RAILROAD COMPANY*



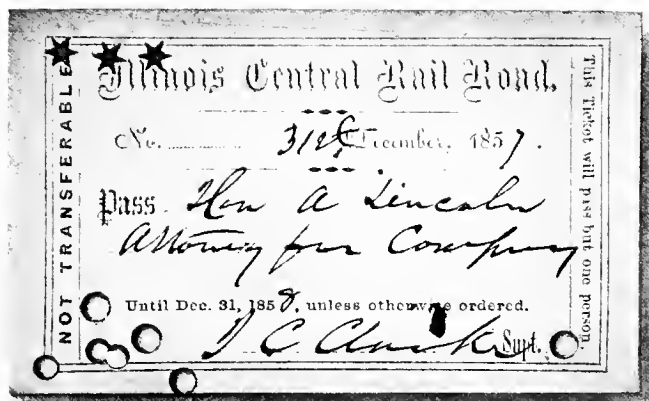
*COMPLIMENTS OF THE
ILLINOIS CENTRAL RAILROAD COMPANY*

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PHOTOGRAPH of Mr. Lincoln at the time he was attorney for the Illinois Central Railroad Company in the early '50s. The negative from which this photograph was taken is from an original print, in the possession of Mr. George B. Ward, photographer, No. 314 Wabash avenue, Chicago, and is said to be the only one in existence.







REPRODUCTION
OF ORIGINAL
DOCUMENTS IN
MR. LINCOLN'S
HANDWRITING



"Can there be any valid pre-emption on sections of land, alternate to the sections granted to the Illinois Central Railroad?"

My opinion is asked on the above question—

"An Act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights" Approved Sep. 4, 1841, contains the first permanent, or prospective pre-emption law—

5. U. S. Stat. at Large 453.

Sections ten, eleven, twelve, thirteen, fourteen, and fifteen, of this act, relate exclusively to pre-emption— In Section ten it is provided that "no sections of land reserved to the United States, alternate to other sections granted to any of the States for the construction of any canal, railroad or other public improvement, shall be liable ^{to entry} under laws by virtue of the provisions of this act."

This act continues to be our general pre-emption law, up to the present time— and, although some supplementary provisions have afterwards been enacted, the above provision, in section ten, remained untouched up to Sep. 20, 1850, when the Central Railroad grant was made—

The latter act, preserved existing pre-emptions, on the even sections, granted generally, for the Road; but made no mention of pre-emption, as to the odd sections reserved to the United States—

9 Stat. at Large. 466.

August 2, 1852 "An Act to protect actual Settlers upon the Land on the Line of the Central Railroad and Branches, by granting Pre-emption Rights thereto!"

^{was passed} By this act, pre-emptions were given on these re-

reserved sections, to such persons as were settled on them, on Sep. 20, 1850, in such way as to be entitled to the benefit of the Act of Sep. 4, 1841, 10 Stat. at Large - 27.

This, it is perceived, limits the right to those who have made actual settlements upon the lands, on the 20th of Sep. 1850 — the date of the Central Railroad grant.

March 3, 1853 "An Act to extend Pre-emption Rights to certain lands therein mentioned" was enacted —

By this act the general pre-emption laws are extended to these reserved sections, with a proviso "That no person shall be entitled to the benefit of this act who has not settled and improved, or shall not settle and improve such lands prior to the final allotment of the alternate sections, to such Railroads, by the General Land Office" 10 Stat. at Large - 244.

I have examined all the subsequent acts of Congress up to the close of the Session, on March 3, 1855; and I do not discover that the above

proviso has even been disturbed or — "An Act for the relief of settlers on lands reserved for Railroad purposes, approved March 27, 1854 — does not affect the act last referred to. 10 Stat. at Large 269 —

The final allotment of the alternate sections to the Illinois Central Railroad Company, by the General Land Office, was made on the 13th day of March 1852 —

It is my opinion that persons who settled on those reserved sections prior to this date of said "final allotment" might have a valid pre-emption; and that those who settled thereon after the date of said allotment, could not —

As to the modes of redress, in cases of presumptions having been improperly allowed by the Register and Receiver, it is more difficult to answer, owing to that matter depending upon the regulations, or special action, of the Departments, and not upon express statutory provisions—

I understand that if a presumption be illegally allowed by the Register and Receiver, or, even legally allowed, but upon false or fraudulent proof, and forwarded to the General Land Office; the party interested to contest the presumption, may address a letter, or petition petition, to the Commissioner of the General Land Office, describing the land, stating the facts, and pointing out wherein the illegality or fraud consists, and asking for a re-hearing; and that, thereupon, the Commissioner will direct the Register and Receiver to give a re-hearing, upon notice to both presumpor, and contestant—

I, therefore, would advise that whenever, on these reserved sections, a settlement and improvement have been made before the "allotment" of the General Land Office, ^{as claim is now settled} ~~made~~ before, March 13, 1852, and the claim should be contested, on the ground that ~~the~~ the right has been lost, by not being followed up with claim, proof, and payment, in season time— See Section 15 of the Act of Sep. 4, 1841—

In cases where settlements were made after the allotment, contest them on the ground that there never was a right—

The contest to be made in the mode above pointed out— The letter, or petition, to the Commissioner, should, in this class of cases, contain a reference to the ^{as of 1852} Acts of Sep. 4, 1841— Sep.

59
20. 1850 - August 2. 1852 - March 3. 1853 & March 27.
1854 - and particularly to that of March 3. 1853 -

Also, if it be intended to assail the propriety of
the prescripter has made, as being false or fraud-
ulent, it would be better to verify the Petition
by affidavit -

March 6. 1856

A. Lincoln

#10

Abraham Lincoln }
" }
The Illinois Cen- }
tral Railroad }
Company }

Trespass on the car on premises.
Damage \$6000.00.

The clerk of the McLean County
Circuit Court will please issue a summons
in the above entitled cause.

Lincoln per se

Proof

Retainer.

Brayman & Joy's letter, with proof of their signatures, and that they were the active agents of the company -

That I did the service, arguing the case twice.

Logan & Stuart.

What was the question. How decided - & on what point.

The record - the final order - & the opinion -

That I, and not Joy, made the point & argument on which the case turned -

Logan & Stuart.

The company own near two million acres, & then run across through twenty-six counties -

That half a million, put at interest, would scarcely pay the tax -

And, as to the ~~amount~~ amount of fees, the complexity and difficulty of the question, the degree of success in the suit, and the amount of pecuniary interest involved, not merely in the particular case, but covered by the principles involved, and then passed to the client, as all proper elements, by the custom of the profession, ^{to consider} in determining what is a reasonable fee in a given case -

That \$5000 is not an unreasonable fee in this case -

11
In the Circuit Court of
McLean County -
April Term. AD. 1857.

State of Illinois }
McLean County } SS.

Abraham Lincoln, plaintiff,
complains of the Illinois Central Railroad
Company, defendants, being in custody &c.
of a plea of trespass on the case, or pro-
mises;

For that whereas heretofore, to-wit, on the
first day of January in the year of our Lord
one thousand eight hundred and fiftyseven,
at the county aforesaid, in consideration that
the said plaintiff, at the special interest and
request of the said defendants, had before
that time, done, performed, bestowed, and
given his work and labor, care, diligence,
attendance and skill, as an attorney and
solicitor of and for the said defendants, and
upon their retainer, in and about the pro-
secuting, defending, and soliciting of divers causes,
suits, and business for the said defendants,
they, the said defendants, undertook, and
then and there faithfully promised the said
plaintiff to pay him so much money as he
therefor reasonably deserved to have of the
said defendants, when they, the said defendants,

ants should be thereunto answered, re-
served. And the ^{said} plaintiff ~~and~~ avers, that
he therefore reasonably deserved to have, of
the said defendants, the sum of five thous-
and dollars, four, at the County aforesaid,
whereof the said defendants, afterwards, four,
on the day and year aforesaid, had notice.

Yet the said defendants (although often re-
quested so to do) have not as yet paid the
said sum of money, or any part thereof, but,
so to do have hitherto wholly neglected and
refused, and still do neglect, and refuse.
To the damage of the said plaintiff of Six
thousand dollars; and therefore he brings his
Suit &c.

Lincoln, per se

(Copy of account sued on)

The Illinois Central Railroad Company

To A. Lincoln Dr.

To professional services in the case
of the Illinois Central Railroad
Company, against the County of
McLean, twice argued in the
Supreme Court of the State of Ill-
inois, and finally decided at the
December Term 1855.

\$5000.00.

State of Illinois,
Sangamon County } ss

Abraham Lincoln the plaintiff in
a certain ^{pending in the Circuit Court of the County of Sangamon, Illinois.} suit at law, wherein the Illinois Central
Railroad Company, are defendants, being first duly
sworn, states on oath that he desires to take the
depositions of Norman B. ^{Isaac N. Arnold} Judson, and Grant Goodrich
of Chicago, Illinois; Archibald Williams and Orville
H. Browning, of Quincy, Illinois; Norman H. Purple,
of Peoria, Illinois, and Stephen T. Logan of Spring
field Illinois, to be read in evidence in said
suit; and that each and all of said witnesses
reside in different counties from the County of
Sangamon, in which said suit is pending -
A. Lincoln -

Affidavit, of which above is a copy, mailed to
Clerk at Bloomington Jan'y 16. 1857.



SOON after the incorporation of the Illinois Central Railroad Company, Mr. Lincoln, who was then practicing law at Springfield, Illinois, was appointed one of its attorneys, and documents still in existence show that he was consulted with reference to important questions arising upon the construction of the charter of the company.

The first photograph herein is that of the pass carried by Mr. Lincoln in 1858. It was surrendered to the company at the expiration of the year for renewal.

During the year 1856 an important question arose upon the construction of the charter of the company. It was submitted to Mr. Lincoln, who gave an opinion in relation to the same, the second photograph being from the original in Mr. Lincoln's handwriting. The question upon which this opinion was given was afterwards litigated in the courts of Illinois and finally decided in the case of *Walker v. Herrick*, (18th Illinois Supreme Court Reports, at page 570.) The Supreme Court held in harmony with the opinion of Mr. Lincoln, although his name does not appear as one of the attorneys in the case.

Probably the most important case which Mr. Lincoln had for the company was that of *Illinois Central Railroad Company versus County of McLean*, reported in

the 17th Illinois Supreme Court Reports, at page 291. The question at issue involved the construction of the charter of the company exempting its property from taxation and requiring that it pay to the State of Illinois a certain per cent of its gross earnings in lieu of all taxation.

Associated with Mr. Lincoln in this case were Mr. Mason Brayman, afterwards a general in the Union Army in the War of the Rebellion, and Mr. James F. Joy, in later years general counsel, and at one time president of the Michigan Central Railroad Company, and during the receivership period president of the Wabash Railroad Company, and the same who placed in nomination for the Presidency at the Chicago Convention in 1884 the Hon. James G. Blaine.

While the immediate amount involved in this case was small, the question was one of much importance to the company, and Mr. Lincoln presented a bill for his fees (doubtless the largest he ever presented to any client) for five thousand dollars. The then general counsel of the road advised Mr. Lincoln that while he recognized the value of his services, still, the payment of so large a fee to a western country lawyer without protest would embarrass the general counsel with the board of directors in New York, who would not understand, as would a lawyer, the importance of the case and the consequent value of Mr. Lincoln's services.

It was intimated to Mr. Lincoln, however, that if he would bring suit for his bill in some court of competent jurisdiction, and judgment were rendered in his

favor, the judgment would be paid without appeal. Thereupon Mr. Lincoln brought suit in the Circuit Court of McLean County at the April term, 1857, and we present herewith photographic copies from the original papers prepared by Mr. Lincoln for this suit, the third photograph being the praecipe; the fourth, the declaration; the fifth, notice to take depositions; and the sixth, brief of the important points to be presented in the case. Following the photographs herein is a copy of the court records of McLean County showing trial, judgment, etc.

Some interesting incidents in the trial of this case are given by Mr. Charles L. Capen, a prominent attorney at Bloomington, Illinois, now president of the Illinois Bar Association. It in substance is:

When the case was reached for trial on Thursday morning June 18th, 1857, no one appearing for the defendant, judgment was taken by default for five thousand dollars. That afternoon John M. Douglas, one of the company's general solicitors at that time, arrived from Chicago too late of course to attend the trial. He told Mr. Lincoln that default placed him in an embarrassing position, that he (Lincoln) ought to have the fee, and asked him to permit the default to be set aside, and the case tried. To this Mr. Lincoln readily consented, and the case was set down for trial on Tuesday June 23d, 1857.

On the trial of the case Mr. Douglas called Mr. Lincoln's attention to the fact that two hundred dollars had already been paid him on account of this fee, which

Mr. Lincoln said he had forgotten, and accordingly reduced his demand to four thousand eight hundred dollars.

Mr. Lincoln had taken the depositions of some of the leading lawyers of the state as to what was a reasonable fee. Among these were O. H. Browning and Archibald Williams of Quincy, Illinois; Norman B. Judd, Isaac N. Arnold and Grant Goodrich, of Chicago, Illinois; Norman H. Purple, of Peoria, Illinois; and Stephen T. Logan, of Springfield, Illinois.

Mr. Lincoln tried his own case and as he got up to speak to the jury a button on his trousers gave away. Saying "Wait a minute 'til I fix my galluses," he took out a knife, whittled a stick and used that in place of the button.

Mr. David Davis, afterwards a Justice of the Supreme Court of the United States, was the presiding judge. The jury returned a verdict for Mr. Lincoln for the full amount of four thousand eight hundred dollars, which was promptly paid by the company.

These are in substance the noteworthy incidents of this unique case.



At a special term of the Eighth Judicial Circuit Court of the State of Illinois, begun and held for common law business expressly, in pursuance of an order of said court made at the March term thereof, to wit, on the eleventh day of April, A. D. 1857, at the court house in Bloomington, in and for the County of McLean, on the fifteenth day of June, in the year of our Lord one thousand eight hundred and fifty-seven.

Present :

Hon. David Davis, Judge.
William McCullough, Clerk.
Joseph H. Moore, Esq., Sheriff.

And thereupon the court proceeded to business as follows, to wit :

Thursday, June 18th, 1857.

1475.	ABRAHAM LINCOLN	}	In Assumpsit.
	vs.		
THE ILLINOIS CENTRAL RAILROAD	COMPANY.		

This day this cause being regularly called for trial the plaintiff came, and the plea of non-assumpsit having by the defendant been pleaded at a former term of this court and issue herein being joined thereon by the plaintiff, the defendants now came not. And the plaintiff claimed a trial, a jury came, who, being duly elected, tried and sworn to try the issue in said cause, and who having heard the evidence of the plaintiff, for verdict say : "We, the jury, find the issue for the plaintiff and assess his damages at five thousand dollars." It is therefore adjudged by the court that the plaintiff recover of the defendants the said sum of five thousand dollars, together with his costs herein expended, and that he have execution therefor.

Tuesday, June 23d, 1857.

1475. ABRAHAM LINCOLN
vs.
THE ILLINOIS CENTRAL RAILROAD } In Assumpsit.
COMPANY.

This day came the parties and by their agreement the verdict and judgment rendered herein at a former day of this term, are set aside. And now the issue being joined and the parties being ready for trial, a jury came, twelve good and lawful men, to wit, Cyrus B. Dunkle, Uriah Washburn, William H. Hodge, Hargo Parsons, Simon B. Brown, Abraham Stansbury, Jesse Adams, James Gilmore, Sr., Daniel B. Robinson, Jacob C. Mahan, Jeremiah Spurgin and William McKisson, who, being duly elected, tried and sworn to try said issue, and who having heard the evidence of the parties and arguments of counsel for verdict say, "We the jury, find the issue for the plaintiff, and assess his damages at the sum of four thousand eight hundred dollars." And thereupon the defendants moved for a new trial, for the reasons following, to wit: "Because the verdict is contrary to the law and the evidence. The court erred in instructing the jury, and for other reasons." Which motion was by the court overruled; to which ruling of the court the defendant thereupon excepts.

It is therefore adjudged by the court that the plaintiff recover of the defendants the said sum of four thousand and eight hundred dollars, together with his costs herein expended, and that he have execution therefor. And by agreement of the parties, the defendants are allowed an appeal to the Supreme Court, upon filing with the clerk an appeal bond in due form, executed by John M. Douglas and James F. Joy, within thirty days from this date. And it is further agreed that a bill of exceptions may be made up out of term, and within said thirty days, by agreement of parties as to its contents, or by the judge if they cannot agree, and so signed and filed. And it is further agreed that if said appeal bond and bill of exceptions shall not be so filed, within said thirty days, there shall be no appeal, and the plaintiff may have his execution.

STATE OF ILLINOIS. }
McLEAN COUNTY. } ss.

I, JAMES C. ELDER, Clerk of the Circuit Court and Keeper of the Records and Seal of the said Circuit Court of McLean County, in the state aforesaid, do hereby certify the above and foregoing to be a true, perfect and complete copy of a judgment had of record in our said court in a certain cause lately therein pending, on the common law side thereof, wherein Abraham Lincoln was plaintiff and The Illinois Central Railroad Company was defendant.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said court, at Bloomington, Illinois, this 19th day of May, 1904.

JAMES C. ELDER,
Clerk.



